Fadil bin Bachok @ Sanusi v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-05–48 OF 2011
ABDUL MALIK ISHAK, CLEMENT SKINNER AND AZAHAR MOHAMED JJCA
20 SEPTEMBER 2012

Criminal Procedure — Appeal — Conviction and sentence, against — Appellant convicted of drug trafficking and sentenced to death — Whether possession proven — Whether prosecution failed to make out prima facie case — Whether trial judge failed to direct himself to inconsistencies and contradictions in evidence of prosecution witnesses — Whether trial judge failed to appreciate defence case — Whether there was any serious error warranting appellate intervention

On 9 September 2009, while on duty for the 'Operasi Pencegah Jenayah', Inspector Zulkifli bin Yahya ('PW3') and his police party had arrested one Imran bin Bachok ('DW2') (the appellant's brother). PW3 and his party then brought DW2 to his house. Upon arrival, PW3 instructed L/Kpl Fauzi bin Norinah (PW2) and another to guard outside the house, in order to keep the area under surveillance, while PW3 and his party together with DW2 entered the house. After recovering some firecrackers from DW2's room, PW3 and his party attempted to conduct a search of another room in the house but the room was locked. After PW3 had knocked on the door several times, the appellant opened the door. PW3 entered the room and noticed that the room was also occupied by the appellant's wife, who was sleeping. At that material time, PW2, who was positioned outside the house and had been standing about one metre from the window, spoke to PW3 through the window to the room and informed him that he saw a man throwing a package from the same window. The package was retrieved and found to contain a compressed slab, which was later confirmed by the chemist to be 744g of cannabis. The appellant was charged for trafficking in the 744g of cannabis, an offence punishable under s 39B(2) of the Dangerous Drugs Act 1952. At the close of the prosecution case, the trial judge came to the conclusion that the prosecution had made out a prima facie case against the appellant and called upon the appellant to enter his defence. The appellant, who elected to give evidence on oath, testified that he did not have any knowledge about the drugs and denied having thrown the package containing the drugs through the window of the room. At the conclusion of the trial the trial judge convicted the appellant and sentenced him to the mandatory death penalty prescribed by the Act. This was the appellant's appeal against that conviction and sentence on the grounds that the trial judge had erred when he failed to realise that possession had not been proven and that as such the prosecution had failed to make out a prima facie

case against him. The appellant argued that the trial judge's failure to direct himself to various parts of the evidence of PW2 and to the contradictions in the evidence of PW3 had occasioned a substantial miscarriage of justice. The appellant also submitted that his defence was reasonable and probable and capable of raising a reasonable doubt but the trial judge had failed to judicially appreciate his defence.

Held, dismissing the appeal:

(1) In his judgment the trial judge had made specific findings concerning the evidence of PW2 in relation to the evidence of the appellant throwing from the window a package containing the offending drugs. The evidence of PW2 that he saw the appellant throw the cannabis fits in with the other evidence in the case, in that, there were only two persons in the room, namely the appellant and his wife, and the appellant's wife was sleeping at that time. Thus, having regard to the surrounding and prevailing circumstances of this case the challenge mounted by the appellant against the credibility of PW2 was baseless (see para 14).

(2) Although the appellant argued that PW3's oral evidence contradicted his police report, the police report had to be scrutinised properly and correctly in its entirety. In his police report PW3 had stated that it was PW2 who in fact had seen the appellant throw the package (see para 19).

(3) There was no merit in the appellant's argument that the trial judge had failed to carry out a maximum evaluation of the evidence of the appellant's wife. The trial judge had made a finding in his judgment that the evidence of the appellant's wife and brother (DW2) had to be carefully considered and scrutinised for the obvious reason that they were both related to the appellant. On the facts of the present case, the trial judge was entitled and correct in accepting some parts of the evidence of these witnesses and rejecting other parts which he felt were not credible enough. As such, there had been no misdirection by the trial judge in this finding of fact (see para 20).

(4) It was ostensibly clear from the judgment of the trial judge that he had carefully analysed the defence advanced by the appellant and given due consideration to the critical issue. It had not been shown that the findings of the trial judge went against the weight of the evidence and there were no grounds for appellate intervention (see para 21).

[Bahasa Malaysia summary

Pada 9 September 2009, semasa bertugas bagi 'Operasi Pencegah Jenayah', Inspector Zulkifli bin Yahya ('PW3') dan pasukan polisnya menangkap seorang yang bernama Imran bin Bachok ('DW2') (abang perayu). PW3 dan pasukannya kemudian membawa DW2 ke rumahnya. Sesampainya ke sana, PW3 mengarahkan L/Kpl Fauzi bin Norinah ('PW2') dan seorang lagi

menjaga kawasan luar rumah, untuk memastikan kawasan tersebut dalam pengawasan, sementara PW3 dan pasukannya bersama DW2 memasuki rumah tersebut. Selepas menemui beberapa mercun daripada bilik DW2, PW3 dan pasukannya mencuba melakukan pencarian di bilik satu lagi di dalam rumah tersebut tetapi bilik tersebut berkunci. Selepas PW3 mengetuk pintu beberapa kali, perayu membuka pintu. PW3 memasuki bilik dan melihat bahawa bilik tersebut turut didiami oleh isteri perayu, yang sedang tidur. Pada masa material, PW2 yang berada di luar rumah dan sedang berdiri lebih kurang 1 meter daripada tingkap, bercakap dengan PW3 melalui tingkap bilik tersebut dan memberitahunya bahawa dia melihat seorang lelaki mencampak suatu bungkusan daripada tingkap yang sama. Bungkusan tersebut didapatkan semula dan didapati mengandungi ketulan mampat, yang kemudiannya disahkan oleh ahli kimia sebagai 744g kanabis. Perayu dituduh mengedar 744g kanabis, suatu kesalahan yang boleh dihukum di bawah s 39B(2) Akta Dadah Berbahaya 1952. Di akhir kes pendakwaan, hakim perbicaraan mencapai keputusan bahawa pihak pendakwaan telah membuktikan kes prima facie terhadap perayu dan memanggil perayu membela diri. Perayu, yang memilih untuk memberikan keterangan bersumpah, memberi keterangan bahawa dia tidak mempunyai apa-apa pengetahuan tentang dadah dan menafikan mencampak bungkusan mengandungi dadah melalui tingkap bilik tersebut. Di akhir kes, hakim perbicaraan mensabitkan perayu dan menghukumnya dengan penalti mandatori mati yang dinyatakan di dalam Akta. Ini adalah rayuan perayu terhadap sabitan dan hukuman atas alasan bahawa hakim perbicaraan telah terkhilaf apabila beliau gagal menyedari bahawa milikan tidak dibuktikan dan oleh itu pihak pendakwaan telah gagal membuktikan kes prima facie terhadapnya. Perayu menghujah bahawa kegagalan hakim perbicaraan mengarahkan dirinya kepada beberapa bahagian keterangan PW2 dan kepada percanggahan di dalam keterangan PW3 telah menyebabkan ketidakadilan yang substansial. Perayu juga menghujah bahawa pembelaannya adalah munasabah dan berkemungkinan dan boleh membangkitkan keraguan yang munasabah tetapi hakim perbicaraan telah gagal menghargai pembelaannya dari segi undang-undang.

Diputuskan, menolak rayuan:

(1) Di dalam penghakimannya hakim perbicaraan telah membuat dapatan spesifik berkaitan dengan keterangan PW2 berhubung dengan keterangan mencampak daripada tingkap tersebut suatu bungkusan yang mengandungi dadah yang salah. Keterangan PW2 bahawa dia melihat perayu mencampak kanabis bersesuaian dengan keterangan satu lagi di dalam kes, bahawa, terdapat hanya dua orang di dalam bilik tersebut, iaitu perayu dan isterinya dan isterinya sedang tidur pada masa tersebut. Oleh itu, mengambil kira keadaan sekeliling dan sedia ada kes ini, cabaran yang dikemukakan oleh perayu terhadap kebolehpercayaan PW2 adalah tidak berasas (lihat perenggan 14).

(2) Walaupun perayu menghujah bahawa keterangan lisan PW3 bercanggah dengan laporan polisnya, laporan polis tersebut perlu diteliti dengan wajar dan betul secara keseluruhannya. Di dalam laporan polisnya, PW3 menyatakan bahawa ia adalah PW2 yang sebenarnya melihat perayu mencampak bungkusan tersebut (lihat perenggan 19).

(3) Tidak ada merit di dalam hujahan perayu bahawa hakim perbicaraan telah gagal membuat penilaian maksimum keterangan isteri perayu. Hakim perbicaraan juga telah membuat penemuan di dalam penghakimannya bahawa keterangan isteri dan abang perayu (DW2) perlu dipertimbangkan secara berhati-hati dan teliti atas alasan yang jelas bahawa mereka berdua mempunyai hubungan dengan perayu. Atas fakta kes ini, hakim perbicaraan berhak dan betul dalam menerima sebahagian keterangan saksi-saksi ini dan menolak bahagian lain yang beliau rasa tidak boleh dipercayai secukupnya. Oleh demikian, tidak ada salah arahan oleh hakim perbicaraan dalam penemuan fakta (lihat perenggan 20).

(4) Adalah jelas secara zahirnya daripada penghakiman hakim perbicaraan bahawa beliau telah menganalisa dengan berhati-hati, pembelaan yang dikemukakan oleh perayu dan memberikan pertimbangan yang sewajarnya kepada isu kritikal. Ia tidak ditunjukkan bahawa penemuan oleh hakim perbicaraan bercanggah dengan beban keterangan dan tidak ada alasan-alasan untuk campur tangan mahkamah rayuan (lihat perenggan 21).]

Notes

For cases on conviction and appeal against sentence, see 5(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 324–370.

Cases referred to

Balachandran v PP [2005] 2 MLJ 301; [2005] 1 CLJ 85, FC (refd)
Herchun Singh & Ors v PP [1969] 2 MLJ 209; [1969] 1 LNS 52, FC (refd)
Lim Guan Eng v PP [1998] 3 MLJ 14; [1998] 3 CLJ 760, CA (refd)

Legislation referred to

Dangerous Drugs Act 1952 ss 37(da)(vi), 39B(2)

Appeal from: Criminal Trial MT3–45A–05 of 2010 (High Court, Johor Bahru)

Hisham Teh Poh Teik (Teh Poh Teik & Co) for the appellant.
Farah Ezlin Yusop Khan (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Azahar Mohamed JCA (delivering judgment of the court):

[1] Fadil bin Bachok ('the appellant') was charged and tried before the Johor Bahru High Court for trafficking in 744g of dangerous drugs, namely cannabis, an offence under s 39B(2) of the Dangerous Drugs Act 1952 ('DDA'), and punishable under s 39B(2) of the DDA. The offence was said to have been committed on 9 September 2009 at about 2.40am at a house in Pekan Nenas, in the district of Pontian in the State of Johor Darul Ta'zim.

[2] The learned judicial commissioner ('JC') at the conclusion of the trial convicted the appellant and sentenced him to the mandatory death penalty prescribed by the DDA. Aggrieved by that decision, the appellant then appealed to this court. We heard his appeal, wherein at its conclusion we unanimously dismissed it. We affirmed the conviction and sentence. We now give our reasons for so deciding.

[3] The salient facts adduced by the prosecution at the trial in the High Court are these. On 9 September 2009 Insp Zulkifli bin Yahya ('PW3') and a police party comprising of five members from the Crime Division of Pontian Police District were on duty for the 'Operasi Pencegah Jenayah' at Pekan Nenas. At about 2.15am, PW3 and his party arrested Imran bin Bachok ('DW2'). After questioning, DW2 told PW3 that he kept some firecrackers at his house. PW3 and his party then brought DW2 to his house. They arrived there at about 2.30am. Upon arrival, PW3 instructed L/Kpl Fauzi bin Norinah ('PW2') to guard outside the house. PW2 together with L/Kpl Saiful Bahari then took up positions outside the house in order to keep the area under surveillance. After that, PW3 and his party gained access into the said house when an elderly woman, later identified as DW2's mother, opened the front door to the said house upon PW3 knocking at the door. PW3 identified himself as a police officer and showed her his authority card.

[4] DW2 then guided PW3 and his party to his room and recovered some firecrackers from the said room. Next, they went to another room to conduct another search but found that room was locked. PW3 knocked at the door since it was locked. The room was subsequently opened by a male Malay, later identified as the appellant, after the door was knocked several times by PW3. The room was lighted. As he entered the room, PW3 noticed the appellant was 'gelisah'. Other than the appellant, there was a woman in the room, who was sleeping at the time PW3 entered the room. She was later identified as Saniasa bt Abdullah ('PW5'), the appellant's wife. And at that material time, PW2 who took his position outside the house spoke to PW3 through the window to the room, informing PW3 that he saw a man throwing a package from the same window. PW3 then instructed PW2 to bring the package into the house. After

receiving the package, PW3 then inspected it, witnessed by the appellant. PW3 found out that inside the transparent plastic package was a compressed slab. PW3 then seized the compressed slab and brought both the appellant and DW2 back to the police station. The compressed slab was later confirmed by the chemist, Norashidah bt Omar ('PW4') to be cannabis, weighing 744g.

[5] On the basis of the evidence that we have discussed beforehand, after the conclusion of the case for the prosecution, the learned JC came to the finding that the prosecution had made out a prima facie case against the appellant and therefore called upon the appellant to enter on his defence in respect of the offence charged. The learned JC made a finding that the appellant was in possession of the cannabis in question and as the weight of the cannabis was over 200g, he invoked the presumption under s 37(da)(vi) of the DDA to presume that the appellant was trafficking in the cannabis.

[6] The appellant elected to give evidence on oath and called his brother, DW2 as his witness. The appellant's defence was very simple and quite straightforward and can be summarised as follows. He did not have any knowledge about the drugs and neither did he throw the drugs from the window. This is the core of the appellant's defence. Before the police came he was sleeping. He was arrested as soon as he opened the door.

[7] At the conclusion of the trial, the learned JC found that the prosecution had proved its case beyond reasonable doubt against the appellant and the appellant failed to rebut the presumption of trafficking under s 37(da)(vi) of the DDA on the balance of probabilities. As stated earlier, the appellant was convicted of the offence and sentenced accordingly.

[8] Before us, the appellant raised two principal grounds in support of his appeal. We shall deal with each of them in turn.

FIRST GROUND: POSSESSION HAD NOT BEEN PROVEN

[9] On this issue, learned counsel for the appellant argued that the learned JC erred when he failed to realise that possession had not been proven and as such the prosecution had not made out a prima facie case against the appellant; the learned JC should have recorded an order of acquittal at the conclusion of the case for the prosecution. The arguments by learned counsel here were two pronged. First and foremost, it was argued that both the key prosecution's witnesses, namely PW2 and PW3 are not credible. According to learned counsel, the learned JC erred when he accepted the evidence of these witnesses at face value without subjecting it to a test of maximum evaluation. Secondly, it was argued that the evidence of PW5 did not support the prosecution's case.

[10] Learned counsel then took us through the evidence of PW2 led at the trial. In particular, he brought to our attention the following parts of the evidence of PW2:

(a) Page 12 of the appeal record

(S:) 'Pada jam 2.40 pagi macam mana lihat?

(J:) Satu lelaki Melayu membuka tingkap dan mencampakkan benda yang di balut dengan plastik'.

(b) Page 14 of the appeal record

(S:) 'Nampak siapa buang benda di luar tingkap?

(J:) Tak nampak'.

(c) Page 15 of the appeal record

(S:) 'Kalau terang macam mana tak nampak orang yang membuangnya?

(J:) Cuma nampak tangan'.

[11] Learned counsel then argued that after the lunch break PW2 changed his evidence as can be seen at p 17 of the appeal record:

(S:) 'Macam mana tak lihat orang buang?

(J:) Saya dapat lihat sebab bilik terang. OKT dicam sebagai orang membuang bungkusan melalui tingkap.

(S:) Kenapa nampak pula sekarang

(J:) Pagi tadi saya tak faham soalan.'

[12] In considering this matter, we had closely scrutinised the judgment of the learned JC. In his judgment, the learned JC made specific findings concerning the evidence of PW2 in relation to the evidence of the appellant throwing from the window a package containing the offending drugs. In this context, the learned JC had this to say in his judgment:

> Antara fakta yang dikemukakan untuk membuktikan elemen ini ialah keterangan SP2 yang mana beliau menyatakan diarah oleh SP3 untuk mengawal depan rumah bersama L/Kpl Saiful. Semasa SP2 berada di hadapan rumah itu dalam jarak lebih kurang 1 meter beliau nampak satu lelaki Melayu telah membuka tingkap 'nako' dan mencampakkan keluar benda yang dibalut dengan plastik Mengikut SP2 pencahayaan dalam bilik di mana bungkusan tersebut dibuang melalui tingkap adalah terang dek lampu dalam bilik hadapan itu. SP2 mengecam tingkap bilik tersebut dan menandakan 'X' pada bahagian hadapan tingkap di dalam ekshibit gambar P6(b). Seterusnya SP2 mengesahkan P12 dan P15 sebagai ketulan yang dibuang melalui tingkap 'nako' dan juga mengecamnya melalui eksibit gambar

P6(q) dan P6(r). Pada malam kejadian itu SP2 sempat melihat siapa yang membuang bungkusan tersebut dan semasa perbicaraan mengecam OKT sebagai orang yang berkenaan itu.

[13] It is true that when dealing with this issue, as submitted by learned counsel, the learned JC never commented on the various parts of the evidence of PW2 as mentioned above. What then is the effect? In this regard, it is a striking uncontroverted fact that prior to PW3 and his party entering the room there were only two persons in the said room, namely PW5 and the appellant. More than that, there is another point which is essential to remember here. PW5 was sleeping when PW3 entered the room. In relation to this, the learned JC made the following pertinent observation in his judgment:

SP3 pula dalam keterangannya menyokong SP2 dengan menyatakan selepas dua atau tiga kali beliau mengetuk pintu bilik hadapan bertanda X dalam P9 rumah berkenaan itu barulah OKT membuka pintu bilik itu dan pada masa itu mendapati isterinya SP5 masih sedang tidur dan lalu terjaga kemudiannya dan langsung diarahkan keluar dari bilik tersebut. Jadi dalam tempoh sebelum OKT membuka pintu bilik tersebut apa yang dilakukan oleh OKT di dalamnya sudah semestinya tanpa pengetahuan SP5 sebab beliau masih tidur.

[14] Coming back then to the argument of learned counsel, in the context of the present case, the failure of the learned JC to direct himself on the various parts of the evidence of PW2, in our opinion, has not occasioned a substantial miscarriage of justice. In our judgment, having regard to the surrounding and prevailing circumstances of this case, even if the learned JC were to direct himself to the various parts of the evidence of PW2 he would have come to the same inescapable and irresistible conclusion that it was the appellant who threw the drugs from the window. One of the tests for accepting or rejecting the evidence of a witness is how far it fits in with the rest of the evidence and the circumstances of the case. In our judgment, the evidence of PW2 that he saw the appellant throw the cannabis fits in with the other evidence in that there were only two persons in the room, namely PW5 and the appellant, and that PW5 was sleeping at the material time. That's why we are constrained to say that the challenge mounted by the appellant against the credibility of PW2 is baseless.

[15] Next, it was argued by learned counsel that the evidence of PW3 did not inspire confidence as his oral testimony contradicted his police report (exh D13). It was argued that in his police report, PW3 said he saw the appellant throwing the package. However, he contradicted himself and said otherwise in his oral evidence. Learned counsel then argued that had the learned JC assessed the evidence of PW3 by taking these inconsistencies he would have found that PW3 is not credible. We do not agree with this submission. In the first place, as submitted by the learned deputy public prosecutor, the police report is not an

encyclopedia. It is not the beginning and ending of every case (see: *Herchun Singh & Ors v Public Prosecutor* [1969] 2 MLJ 209; [1969] 1 LNS 52 and *Balachandran v Public Prosecutor* [2005] 2 MLJ 301; [2005] 1 CLJ 85). Moreover, exh D13 must be scrutinised properly and correctly in its entirety. Nowhere does exh D13 clearly and expressly state that PW3 in point of fact saw the appellant threw the package. But most significantly, in exh D13 it is unambiguously stated that it was PW2 who in fact saw the appellant threw the package.

[16] As regards to the evidence of PW5, a reading of the judgment of the learned JC unmistakably shows that he has judicially appreciated the evidence of this witness. In his judgment, this is how the learned JC assessed and weighed the evidence of PW5:

> SP5 isteri OKT merupakan 'interested witness' dan mahkamah perlu berhati-hati dengan keterangannya tapi sungguhpun demikian beliau tidak menafikan cuma OKT dan dirinya mendiami bilik bertanda 'X' dalam P9 rumah berkenaan. SP5 juga menyatakan semasa anggota polis mengetuk pintu bilik beliau masih tidur dan sebaik sahaja SP3 menyerbu masuk beliau diminta keluar dari bilik tersebut. SP5 mengesahkan memang ada lampu tidur dalam bilik itu. Beliau tidak mempunyai apa-apa pengetahuan mengenai dadah P12 dan P15.

[17] In view of that, it is not correct to say that the learned JC failed to carry out a maximum evaluation of the evidence of PW5. We will have much more to say concerning PW5 when we turn to deal with the second principle ground raised by the appellant in this appeal. We therefore find no merit in the arguments of learned counsel under this head of complaint.

SECOND GROUND: THE LEARNED JC ERRED WHEN HE FAILED TO APPRECIATE THE DEFENCE CASE

[18] As stated earlier, the appellant's core defence was that he did not have any knowledge about the cannabis and neither did he throw the drugs from the window. This, learned counsel contended, is supported by the evidence of the prosecution and the defence on material aspects, particularly that of PW5 and DW2. Learned counsel argued that by the evidence of PW5 the room was only illuminated by a table lamp and that the package was not in the room before PW3 and his men came. He argued that this aspect of the defence had not received any, or any sufficient, attention from the learned JC. Learned counsel argued that the appellant's defence was reasonable and probable and capable of raising a reasonable doubt.

[19] We are of the view that the complaint raised by learned counsel really turns upon a question of fact based upon the credibility of PW5 and DW2.

The learned JC who is required to adjudicate upon a dispute on an issue of fact must arrive at his decision by appreciating and evaluating all the evidence placed before him. In this regard, the learned JC has made a finding in his judgment that the evidence of PW5 and DW2 must be carefully considered and scrutinised for the obvious reason that they are both related to the appellant. In the words of the learned JC in his judgment:

> Kedua-dua SD2 dan SP5 adalah merupakan saksi berkepentingan ('interested witness') kerana mereka adalah adik dan isteri OKT masing-masingnya. Maka oleh itu mahkamah amat berhati-hati dengan keterangan mereka kerana sudah pasti sebagai adik dan isteri OKT akan cuba memberi keterangan yang berpihak kepada abang dan suami mereka masing-masing. Tetapi pada keseluruhannya keterangan SP5 tidak menggugat kes pendakwaan dan sekiranya ada perbezaan pun ianya adalah kecil dan telah pun diperjelaskan sebentar tadi berdasarkan keterangan SP3 dan SP2. Begitu juga keterangan SD2 tidak langsung menggugat kes pendakwaan kerana sepertimana yang telah diperjelaskan terdahulu tadi peranan beliau di tempat dan masa kejadian tamat apabila mercun dijumpai di dalam bilik beliau bertanda 'D' dalam Rajah Kasar (P9) dan apa-apa keterangan lain oleh beliau untuk menyokong OKT adalah rekaan semata-mata.

[20] In our judgment, this direction is along the approach indicated in the case of *Lim Guan Eng v Public Prosecutor* [1998] 3 MLJ 14; [1998] 3 CLJ 760 which was referred to by the learned deputy public prosecutor in her submissions. Furthermore, the learned JC went on to clarify why he was not bound to accept each and every word of PW5 and DW2 in their evidence. On the facts of the present case, the learned JC was entitled and correct in accepting some parts of the evidence of these witnesses while rejecting others which he felt is not credible enough. We are of the view that there has been no misdirection by the learned JC in this finding of fact.

[21] It is ostensibly clear from a reading of the judgment of the learned JC that he had critically appraised the defence that the appellant did not have any knowledge about the cannabis. It is for this reason, we do not accept the contention of learned counsel that the learned JC failed to judicially appreciate the defence of the appellant. Indeed, the learned JC has analysed carefully the defence advanced by the appellant and has given due consideration to the critical issue. It has not been shown that the findings of the learned JC is against the weight of evidence or perverse in any way. The judgment of the learned JC does not contain any serious error warranting appellate interference.

[22] The learned JC found that both PW2 and PW3 had given credible evidence. At all material times, PW2 was standing outside the house, about one meter from the window. From the said window of the room he saw the appellant threw a package. There was only the appellant and PW5 in the room. As PW3 entered the room after the appellant opened the door, the appellant

was looking 'gelisah'. PW5 was asleep at that point of time. It was at this juncture that PW2 informed PW3 through the window that he saw the appellant threw a package containing the cannabis in question. We find no error in the learned JC's acceptance of their evidence. The learned JC was entitled and correct in deciding that based on these facts, the appellant had custody and control of the cannabis by the act of throwing it. The proper and only irresistible inference to be drawn from the facts and circumstances of this case must be that the appellant knew the transparent plastic package contained the said cannabis. We agree with the learned JC. We would decide likewise. We are unanimous that this finding was correct and consistent with the evidence placed before the learned JC. There are no compelling grounds at all to warrant appellate intervention.

[23] We find the conviction of the appellant safe. For reasons aforesaid, we dismiss this appeal and we uphold the conviction and sentence imposed by the learned JC.

Appeal dismissed.

Reported by Kohila Nesan